

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE ELECTRONIC BOOKS ANTITRUST
LITIGATION

No. 11-md-02293 (DLC)
ECF Case

This Document Relates to:

CLASS ACTION

ALL ACTIONS

**DECLARATION OF STEVE W. BERMAN
IN FURTHER SUPPORT OF CLASS PLAINTIFFS' MOTION FOR CLASS
CERTIFICATION AND *DAUBERT* MOTIONS**

SUBMITTED UNDER SEAL
Pursuant to Protective Order

I, STEVE W. BERMAN, declare as follows:

1. I am the managing partner for the law firm of Hagens Berman Sobol Shapiro LLP ("Hagens Berman"), one of the co-lead counsel of record for Class Plaintiffs in the above-entitled matter. I have personal knowledge of the matters stated herein and, if called upon, I could and would competently testify thereto.

2. Attached are true and correct copies of the following exhibits:

No.	Description	Admitted Trial Ex. No.
1	Excerpts from the June 12, 2013 Reporter's Transcript of Proceedings, <i>United States v. Apple Inc., et al.</i> , No. 12-cv-2826 (DLC)	
2	Excerpts from the Direct Testimony of Richard L. Gilbert, Ph.D., in <i>United States v. Apple Inc., et al.</i> , No. 12-cv-2826 (DLC)	PX-1105
3	Excerpts from the June 19, 2013 Reporter's Transcript of Proceedings, <i>United States v. Apple Inc., et al.</i> , No. 12-cv-2826 (DLC)	
4	Excerpt from the February 8, 2013 Expert Report of Jonathan B. Baker, <i>Texas et al. v. Penguin Group (USA) Inc., et al.</i> , No. 12-cv-03394 (DLC)	
5	Excerpts from the June 18, 2013 Reporter's Transcript of Proceedings, <i>United States v. Apple Inc., et al.</i> , No. 12-cv-2826 (DLC)	
6	Excerpts from the May 29, 2013 Revised Declaration of Dr. Michelle Burtis in <i>United States v. Apple Inc., et al.</i> , No. 12-cv-2826 (DLC)	DX-721
7	Excerpts from the March 1, 2013 Rebuttal Expert Report of Dr. Michelle Burtis on Behalf of Apple Inc. and Penguin Group (USA), Inc., <i>United States v. Apple Inc., et al.</i> , No. 12-cv-2826 (DLC)	

No.	Description	Admitted Trial Ex. No.
8	Deposition of Joseph P. Kalt, Ph.D., taken on December 4, 2013 in the above-captioned litigation by Gail Inghram Verbano, CSR	
9	Deposition of Jonathan Orszag, taken on December 7, 2013 in the above-captioned litigation by Laurie Bangart, RPR	
10	Excerpts from the Deposition of Roger G. Noll, Ph.D., taken on November 1, 2013 in the above-captioned litigation by Wendy E. Arlen, CSR #4355, RMR, CRR	
11	Excerpts from the June 12, 2013 Reporter's Transcript of Proceedings, <i>United States v. Apple Inc., et al.</i> , No. 12-cv-2826 (DLC)	
12	Excerpts from the February 8, 2013 Expert Report of Richard J. Gilbert, <i>United States v. Apple Inc., et al.</i> , No. 12-cv 2826 (DLC)	
13	Excerpts from the February 8, 2013 Report of Orley Ashenfelter in Connection with <i>State of Texas et al. v. Penguin Group (USA), Inc. et al.</i> , No. 12-cv-03394 (DLC)	
14	Excerpts from the March 1, 2013 Report of Orley Ashenfelter in Connection with <i>State of Texas et al. v. Penguin Group (USA), Inc. et al.</i> , No. 12-cv-03394 (DLC)	
15	Excerpts from April 24, 2013 Direct Testimony of Russell C. Grandinetti (Amazon.com), <i>United States v. Apple Inc., et al.</i> , No. 12-cv 2826 (DLC); <i>State of Texas et al. v. Penguin Group (USA), Inc. et al.</i> , No. 12-cv-03394 (DLC)	PX-0835
16	Excerpts from the Deposition of Russell Grandinetti, taken on January 28, 2013 in <i>United States v. Apple Inc., et al.</i> , No. 12-cv 2826 (DLC) by Paul J. Frederickson, CCR, CSR	
17	Excerpts from the April 26, 2013 Declaration of Carolyn Reidy,	DX-552

No.	Description	Admitted Trial Ex. No.
	<i>United States v. Apple Inc., et al.</i> , No. 12-cv 2826 (DLC); <i>State of Texas et al. v. Penguin Group (USA), Inc. et al.</i> , No. 12-cv-03394 (DLC)	
18	Excerpts from the April 26, 2013 Declaration of John Sargent, <i>United States v. Apple Inc., et al.</i> , No. 12-cv 2826 (DLC); <i>State of Texas et al. v. Penguin Group (USA), Inc. et al.</i> , No. 12-cv-03394 (DLC)	DX-701
19	Excerpts from the April 26, 2013 Declaration of David Young, <i>United States v. Apple Inc., et al.</i> , No. 12-cv 2826 (DLC); <i>State of Texas et al. v. Penguin Group (USA), Inc. et al.</i> , No. 12-cv-03394 (DLC)	DX-702
20	Excerpts from the Deposition of Eddy Cue, taken on March 12, 2013 in <i>United States v. Apple Inc., et al.</i> , No. 12-cv 2826 (DLC) by Kimberlee Schroeder, CSR, RPR, CCRR	
21	July 20, 2009 e-mail from Seth Reichlin to Tim McCall and Dick Hefferman re "Penguin titles for next round of price elasticity measurement," attaching presentation entitled "Price Elasticity of Print and E-Books on Amazon.com [PEN-LIT-00177045-92]"	
22	Excerpts from January 24, 2010 Ebook Agency Distribution Agreement between Apple Inc. and Hachette Book Group, Inc. [HBG-HC-00000019-41]	
23	Excerpts from January 25, 2010 Ebook Agency Distribution Agreement between Apple Inc. and Holtzbrinck Publishers, LLC, doing business as Macmillan [MAC00000039-64]	
24	Excerpts from January 25, 2010 Ebook Agency Distribution Agreement between Apple Inc. and Penguin Group (USA) Inc. [PEN00015636-650]	
25	Excerpts from January 25, 2010 Ebook Agency Distribution Agreement between Apple Inc. and Simon & Schuster, Inc.	

No.	Description	Admitted Trial Ex. No.
	[SS00000001-18]	
26	Excerpts from January 26, 2010 Ebook Agency Distribution Agreement between Apple Inc. and HarperCollins Publishers [HC-TXAG-00095613-628]	
27	December 10, 2009 e-mail from Jeff Bezos to Russell Grandinetti, Felix Anthony, Steven Kessel and Ian Freed re “DTP” [AMZN-MDL-00044064]	
28	January 13, 2010 e-mail from Rohit Gajjela to Russell Grandinetti, Suresh Dhandapani, Melissa Mirmayer and Jeff Tollefson re “RE: DTP Meeting Notes [AMZN-MDL-0154056-58]	
29	Excerpts from the Deposition of Carolyn Reidy, taken on January 17, 2013 in <i>United States v. Apple Inc., et al.</i> , No. 12-cv 2826 (DLC) by Maureen Ratto, RPR, CCR, CLR	
30	Excerpts from the Deposition of Anthony Astarita, taken on February 27, 2013 in <i>United States v. Apple Inc., et al.</i> , No. 12-cv 2826 (DLC) by Lynn Van Den Hende, RPR, CSR, RMR, CRR, CLR	
31	Excerpts from the Deposition of Robert Bruce McDonald, taken on December 11, 2012 in <i>United States v. Apple Inc., et al.</i> , No. 12-cv 2826 (DLC) by Patricia Goulet, CSR	
32	Excerpts from the Deposition of Keith Moerer, taken on December 13, 2012 in <i>United States v. Apple Inc., et al.</i> , No. 12-cv 2826 (DLC) by Kimberlee Schroeder, CSR, RPR, CCRR	
33	April 8, 2010 e-mail from Maja Thomas to Arnaud Nourry attaching “Agency TOS Pricing Matrix” [HBG00283975-79]	
34	March 18, 2010 e-mail from Leslie Hulse to Jason Short attaching “Price Grid” [HC-TXAG-00011352-57]	

No.	Description	Admitted Trial Ex. No.
35	May 20, 2010 e-mail from Fritz Foy to Steve Cohen attaching "Agency Model Day 1 Pricing Recommendation" [MCMLN-LIT-00000280-82]	
36	March 18, 2010 e-mail from Joseph Frizzell to Frank Autunnale attaching "Suggested eBook Pricing Policy as of March 15, 2010" [PEN006602-607]	
37	Document entitled "Agency Model eBook Sales Summary" [SS00001068-73]	
38	October 2010 document entitled "Developing pricing strategy – a framework, Board discussion paper" [PEN072030-35]	
39	March 23, 2010 e-mail from Susan Kennedy to Yvette Dano re "E-book pricing/aging" [PEN012678]	
40	Document regarding Pricing Grid of physical and digital list prices [MAC00043005-09]	
41	Excerpts from the 30(b)(6) deposition of David Shanks, taken on March 21, 2013 in <i>United States v. Apple Inc., et al.</i> , No. 12-cv 2826 (DLC) by Erica Ruggieri, RPR	
42	October 25, 2011 e-mail from Susan Kennedy to Matthew Boyd re "INSIDE STEVE'S BRAIN opportunities" [PEN-LIT-00001084-88]	
43	Excerpts from May 23, 2013 Reporter's Transcript of Proceedings, <i>United States v. Apple</i>	
44	Excerpts from June 5, 2008 document entitled "Sony eBook Reader Business Update" [SEL-R-0005251-5312]	
45	Excerpts from the Deposition of Eddy Cue, taken on January 25, 2011 in <i>In re: Department of Justice E-Book Investigation, Civil Investigative Demand No: 26620</i> by Suzanne I. Andrade, CSR 10682	

No.	Description	Admitted Trial Ex. No.
46	January 24, 2010 e-mail from Steve Jobs to Eddy Cue forwarding e-mail from Steve Jobs to James Murdoch re “Re: HarperCollins” [APLEBOOK-00013995-14004]	
47	October 12, 2009 e-mail from Matt Schatz to Nihar Malaviya and Andrew Weber [RH-MDL-00039707]	
48	May 22, 2009 e-mail from Laura Porco to David Naggar, Ian Freed, Madeline McIntosh, Steven Kessel and Jay Marine re “RE: The Shatzkin Files” [AMZN-TXCID-0017036-41]	
49	December 11, 2009 e-mail from Lenore Feder to various re “eBooks Coverage” [BN00036578-79]	
50	Excerpts from the Deposition of Timothy McCall, taken on January 30, 2013 in <i>United States v. Apple Inc., et al.</i> , No. 12-cv 2826 (DLC) by Maureen Ratto, RPR, CCR, CLR	
51	December 13, 2009 e-mail from Tim McCall to Theresa Horner re “ebook terms of sale,” with attached document entitled “Penguin Group (USA) Inc. Ebook Terms of Sale – January 2010” [PEN675466-67]	
52	January 15, 2010 press release entitled “Amazon Expands Kindle Digital Text Platform to Enable Authors and Publishers Worldwide to Publish English, German and French Language Books in the Kindle Store” [AMZN-MDL-0154054-55]	
53	January 20, 2010 press release entitled “Amazon Announces New 70 Percent Royalty Option for Kindle Digital Text Platform, Enabling Authors and Publishers to Earn More Royalties from Every Kindle Book Sold” [AMZN-MDL-00153987-89]	
54	February 11, 2010 e-mail from Aaron Braunstein to various Apple personnel re “Re: Weekly Book Check-in agenda” [APLEBOOK-00374359-360]	

No.	Description	Admitted Trial Ex. No.
55	May 17, 2010 document entitled “iBooks: First Month” [APPLEBOOK00441278-289]	
56	Excerpts from the April 26, 2013 Declaration of Keith Moerer, <i>United States v. Apple Inc., et al.</i> , No. 12-cv 2826 (DLC)	
57	March 24, 2010 e-mail from Bill Kinneman to Jon Anderson and Dennis Eulau re “RE: Initial Prices for Agency Model – The List” [DOJ-SS-0091280-83]	
58	Excerpt from June 6, 2013 Direct Testimony of Orley C. Ashenfelter, Ph.D., <i>United States v. Apple Inc., et al.</i> , No. 12-cv-2826 (DLC); <i>State of Texas et al. v. Penguin Group (USA), Inc. et al.</i> , No. 12-cv-03394 (DLC)	PX-1097
59	November 6, 2009 e-mail from Simoina Dargan to Russell Grandinetti re “Kindle pricing rules” [AMZN-TXCID-0009667]	
60	Excerpt from document entitled “Kindle eBook Monthly Business Review – April 2010” [AMZN-TXCID-0003759-798]	
61	Excerpt from document entitled “Kindle eBook Monthly Business Review for .com – April 2011” [AMZN-MDL-0003712-758]	
62	April 1, 2010 e-mail from Daniel Schwartz to various recipients re “RE: Agency Model Transition Status – eBooks” [MCMLN-LIT-00489772-73]	
63	Excerpts from the February 8, 2013 Expert Report of Dr. Michelle Burtis on Behalf of Apple Inc., Holtzbrinck Publishers, LLC d/b/a Macmillan and Penguin Group (USA) Inc.; <i>United States v. Apple Inc., et al.</i> , No. 12-cv-2826 (DLC);	

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I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Executed this 18th day of December 2013, at Seattle, Washington.



STEVE W. BERMAN